

## AGENDA BILL APPROVAL FORM

<b>Agenda Subject:</b> Agreement for Consulting Services		<b>Date:</b> January 20, 2009
<b>Department:</b> Human Resources	<b>Attachments:</b> Consulting Services Agreement	<b>Budget Impact:</b>
<b>Administrative Recommendation:</b> City Council approve agreement for consulting services with Dorbritz Architects.		
<b>Background Summary:</b>  City Council approve an agreement between City of Auburn and Dorbritz Architects for consulting services for annex tenant improvements at the City Hall Annex Project.          <div style="display: flex; justify-content: space-between;"> <span>S0120-1</span> <span>A3.16.14, O4.4.11</span> </div>		
<b>Reviewed by Council &amp; Committees:</b> <div style="display: flex;"> <div style="flex: 1;"> <input type="checkbox"/> Arts Commission  <input type="checkbox"/> Airport  <input type="checkbox"/> Hearing Examiner  <input type="checkbox"/> Human Services  <input type="checkbox"/> Park Board  <input type="checkbox"/> Planning Comm.         </div> <div style="flex: 1;"> <b>COUNCIL COMMITTEES:</b>  <input checked="" type="checkbox"/> Finance  <input checked="" type="checkbox"/> Municipal Serv.  <input type="checkbox"/> Planning &amp; CD  <input type="checkbox"/> Public Works  <input type="checkbox"/> Other _____         </div> </div>		<b>Reviewed by Departments &amp; Divisions:</b> <div style="display: flex;"> <div style="flex: 1;"> <input type="checkbox"/> Building  <input type="checkbox"/> Cemetery  <input type="checkbox"/> Finance  <input type="checkbox"/> Fire  <input type="checkbox"/> Legal  <input type="checkbox"/> Public Works  <input type="checkbox"/> Information Services         </div> <div style="flex: 1;"> <input type="checkbox"/> M&amp;O  <input type="checkbox"/> Mayor  <input type="checkbox"/> Parks  <input type="checkbox"/> Planning  <input type="checkbox"/> Police  <input type="checkbox"/> Human Resources         </div> </div>
<b>Action:</b> Committee Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Council Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No      Call for Public Hearing ____/____/____ Referred to _____ Until ____/____/____ Tabled _____ Until ____/____/____		
<b>Councilmember:</b> Backus		<b>Staff:</b> Heineman
<b>Meeting Date:</b> January 20, 2009		<b>Item Number:</b> V.C.4

**CITY OF AUBURN AGREEMENT FOR  
CONSULTING SERVICES  
Annex Tenant Improvements**

THIS AGREEMENT made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between the City of Auburn, a municipal corporation of the State of Washington, hereinafter referred to as "City" and Dorbritz Architects, hereinafter referred to as the "Consultant."

**WITNESSETH:**

WHEREAS, the City is engaged in or readying itself to be engaged in its project of tenant improvements at the City Hall Annex Project, and is in need of services of individuals, employees or firms for architectural services for work on said project; and

WHEREAS, the City desires to retain the Consultant to provide certain services in connection with the City's work on said project; and,

WHEREAS, the Consultant is qualified and able to provide consulting services in connection with the City's needs for the above-described work/project, and is willing and agreeable to provide such services upon the terms and conditions herein contained.

NOW, THEREFORE, the parties hereto agree as follows:

1. Scope of Services

The Consultant agrees to perform in a good and professional manner the tasks described in Exhibit "A" attached hereto and incorporated herein by this reference. (The tasks described in Exhibit "A" shall be individually referred to as a "task," and collectively referred to as the "services.") The Consultant shall perform the services as an independent contractor and shall not be deemed, by virtue of this Agreement and the performance thereof, to have entered into any partnership, joint venture, employment or other relationship with the City.

2. Additional Services

From time to time hereafter, the parties hereto may agree to the performance by the Consultant of subsequent task phases or additional services with respect to related work or projects. Any such agreement(s) shall be set forth in writing and shall be executed by the respective parties prior to the Consultant's performance of the services there under, except as may be provided to the contrary in Section 3 of this Agreement. Upon proper completion and execution of an addendum (agreement for additional services), such addendum shall be incorporated into this Agreement and shall have the same force and effect as if the terms of such addendum were a part of this Agreement as originally executed. The performance of services pursuant to an addendum shall be subject to the

terms and conditions of this Agreement except where the addendum provides to the contrary, in which case the terms and conditions of any such addendum shall control. In all other respects, any addendum shall supplement and be construed in accordance with the terms and conditions of this Agreement.

3. Performance of Additional Services Prior to Execution of an Addendum

The parties hereby agree that situations may arise in which services other than those described in Exhibit "A" are desired by the City and the time period for the completion of such services makes the execution of addendum impractical prior to the commencement of the Consultant's performance of the requested services. The Consultant hereby agrees that it shall perform such services upon the written request of an authorized representative of the City pending execution of an addendum, at a rate of compensation to be agreed to in connection therewith. The invoice procedure for any such additional services shall be as described in Section 7 of this Agreement.

4. Consultant's Representations

The Consultant hereby represents and warrants that he/she has all necessary licenses and certifications to perform the services provided for herein, and is qualified to perform such services.

5. City's Responsibilities

The City shall do the following in a timely manner so as not to delay the services of the Consultant:

- a. Designate in writing a person to act as the City's representative with respect to the services. The City's designee shall have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to the services.
- b. Furnish the Consultant with all information, criteria, objectives, schedules and standards for the project and the services provided for herein.
- c. Arrange for access to the property or facilities as required for the Consultant to perform the services provided for herein.
- d. Examine and evaluate all studies, reports, memoranda, plans, sketches, and other documents prepared by the Consultant and render decisions regarding such documents in a timely manner to prevent delay of the services.

6. Responsibility of Consultant

The Consultant shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all studies, analysis, designs, drawings, specifications, reports and other services performed by the Consultant under this Agreement. The Consultant shall, without additional compensation, correct or revise any

errors, omissions or other deficiencies in its plans, designs, drawings, specifications, reports and other services required. The Consultant shall perform its services to conform to generally-accepted professional architectural standards and the requirements of the City.

Any approval by the City under this Agreement shall not in any way relieve the Consultant of responsibility for the technical accuracy and adequacy of its services. Except as otherwise provided herein, neither the City's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, to the full extent of the law.

7. Acceptable Standards

The Consultant shall be responsible to provide, in connection with the services contemplated in this Agreement, work product and services of a quality and professional standard generally accepted in the industry by professionals similarly situated in the same locality.

8. Compensation

The Consultant shall be paid by the City for completed work and for services rendered under this Agreement. Payment for the work provided by the Consultant shall be made as provided in Exhibit B attached hereto, provided that the total amount of payment to the Consultant shall not exceed ninety-one thousand nine-hundred and forty dollars (\$91,940.00) without express written modification of the Agreement signed by the City.

The Consultant may submit invoices to the City once per month during the progress of the work for partial payment for that portion of the project completed to date. Such invoices will be approved by the City and payment made to the Consultant in the amount approved.

Final payment of any balance due the Consultant of the total contract price earned will be made promptly upon its ascertainment and verification by the City after the completion of the work under this Agreement and its acceptance by the City.

Payment provided in this section shall be full compensation for work performed, services rendered, and for all materials, supplies, equipment and incidentals necessary to complete the work.

The Consultant's records and accounts pertaining to this Agreement are to be kept available for inspection by representatives of the City and State for a period of three (3) years after final payments. Copies shall be made available upon request.

9. Time for Performance and Term of Agreement

The Consultant shall perform the services provided for herein in accordance with the scheduling provided within the Scope of Work Exhibit "A," attached hereto and

incorporated herein by this reference, unless otherwise agreed to in writing by the parties. The term of this Agreement shall commence on the date hereof, and shall terminate upon completion of the performance of the Scope of Work and the schedule provided in Exhibit "A" attached hereto or on December 31, 2010, whichever comes first, unless otherwise agreed to in writing by the parties.

10. Ownership and Use of Documents

All documents, reports, memoranda, diagrams, sketches, plans, surveys, design calculations, working drawings and any other materials created or otherwise prepared by the Consultant as part of his/her performance of this Agreement (the "Work Products") shall be owned by and become the property of the City, and may be used by the City for any purpose beneficial to the City.

11. Access to Records and Reports

The Consultant shall maintain an acceptable cost accounting system. The Consultant agrees to provide the City, or any duly authorized representative access to any books, documents, papers, and records of the Consultant which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts and transcriptions. The Consultant agrees to maintain all books, records and reports required under this Agreement for a period of not less than three (3) years after final payment is made and all pending matters are closed.

12. Continuation of Performance

In the event that any dispute or conflict arises between the parties while this Agreement is in effect, the Consultant agrees that, notwithstanding such dispute or conflict, the Consultant shall continue to make a good faith effort to cooperate and continue work toward successful completion of assigned duties and responsibilities.

13. Administration of Agreement

This Agreement shall be administered by Jan Dorbritz on behalf of the Consultant, and by the Mayor of the City, or designee, on behalf of the City. Any written notices required by the terms of this Agreement shall be served on or mailed to the following addresses:

<u>Peter B. Lewis, Mayor</u> City of Auburn 25 West Main Street Auburn, WA 98001-4998 (253) 931-3000 FAX (253) 931-3053	<u>Consultant</u> Jan Dorbritz, AIA 800 Fernwood Pacific Topanga, CA 90290 (310) 455-1264 FAX (310) 455-1837
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14. Notices

All notices or communications permitted or required to be given under this Agreement shall be in writing and shall be deemed to have been duly given if, delivered in person or deposited in the United States mail, postage prepaid, for mailing by certified mail, return

receipt requested, and addressed, if to a party of this Agreement, to the address for the party set forth above, or if to a person not a party to this Agreement, to the address designated by a party to this Agreement in the foregoing manner.

Any party may change his, her or its address by giving notice in writing, stating his, her or its new address, to any other party, all pursuant to the procedure set forth in this section of the Agreement.

15. Insurance

The Consultant shall be responsible for maintaining, during the term of this Agreement and at its sole cost and expense, the types of insurance coverages and in the amounts described below. The Consultant shall furnish evidence, satisfactory to the City, of all such policies. During the term hereof, the Consultant shall take out and maintain in full force and effect the following insurance policies:

- a. Commercial General Liability insurance, insuring the City and the Consultant against loss or damage arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City, with minimum liability limits of \$1,000,000.00 combined single limit for personal injury, death or property damage in any one occurrence.
- b. Such workmen's compensation and other similar insurance as may be required by law.
- c. Professional errors and omissions liability insurance with minimum liability limits of \$1,000,000.00.
- d. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

**No Limitation.** Consultant's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

16. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

- a. The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Consultant's insurance and shall not contribute with it.
- b. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

17. Indemnification

The Consultant shall indemnify, defend and hold harmless the City and its officers, agents and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, including attorney fees, by any reason of or arising out of the negligent act or omission of the Consultant, its officers, agents, employees, or any of them relating to or arising out of the performance of this Agreement except for injuries and damages caused by the sole negligence of the City. If a final judgment is rendered against the City, its officers, agents, employees and/or any of them, or jointly against the City and the Consultant and their respective officers, agents and employees, or any of them, the Consultant shall satisfy the same to the extent that such judgment was due to the Consultant's negligent acts, errors or omissions.

18. Assignment

Neither party to this Agreement shall assign any right or obligation hereunder in whole or in part, without the prior written consent of the other party hereto. No assignment or transfer of any interest under this Agreement shall be deemed to release the assignor from any liability or obligation under this Agreement, or to cause any such liability or obligation to be reduced to a secondary liability or obligation.

19. Amendment, Modification or Waiver

No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound, or such party's or parties duly authorized representative(s) and specifying with particularity the nature and extent of such amendment, modification or waiver. Any waiver by any party of any default of the other party shall not effect or impair any right arising from any subsequent default.

Nothing herein shall limit the remedies or rights of the parties hereto under and pursuant to this Agreement.

20. Termination, Breach, and Suspension

Any violation or breach of terms of this Agreement on the part of the Consultant or Consultant's sub-Consultants may result in the suspension or termination of this Agreement or such other action that may be necessary to enforce the rights of the parties of this Agreement. The duties and obligations imposed by this Agreement, and the rights

and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

- a. The City may, upon not less than seven (7) days written notice, terminate this Agreement in whole or in part at any time, either for the City's convenience or because of the Consultant's failure to fulfill the Agreement's obligations. Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Agreement, whether completed or in progress, delivered to the City.
- b. If the termination is for the convenience of the City, an equitable adjustment in the Agreement price shall be made, but no amount shall be allowed for anticipated profit on unperformed services. The Consultant shall be compensated for services performed prior to termination in accordance with the rate of compensation provided in Exhibit "B" hereof.
- c. If the termination is due to failure to fulfill the Consultant's obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Consultant shall be liable to the City for any additional costs occasioned to the City thereby.
- d. If, after notice of termination for failure to fulfill Consultant's obligations under this Agreement, it is determined that the Consultant had not so failed, the termination shall be deemed to have been effected for the convenience of the City. In such event, adjustment in the Agreement price shall be made as provided in sub-section 20(b).
- e. The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- f. The Consultant may terminate this Agreement upon thirty (30) days written notice to the City if the City fails to substantially perform in accordance with the terms of this Agreement through no fault of the Consultant.

21. Parties in Interest

This Agreement shall be binding upon, and the benefits and obligations provided for herein, shall inure to and bind the parties hereto and their respective successors and assigns, provided that this section shall not be deemed to permit any transfer or assignment otherwise prohibited by this Agreement. This Agreement is for the exclusive benefit of the parties hereto and it does not create a contractual relationship with or exist for the benefit of any third party, including contractors, sub-contractors and their sureties.

22. Costs to Prevailing Party

In the event of such litigation or other legal action, to enforce any rights, responsibilities or obligations under this Agreement, the prevailing parties shall be entitled to receive its reasonable costs and attorney's fees.



23. Applicable Law

This Agreement and the rights of the parties hereunder shall be governed by the interpreted in accordance with the laws of the State of Washington and venue for any action hereunder shall be in the county in Washington State in which the property or project is located, and if not site specific, then in King County, Washington; provided, however, that it is agreed and understood that any applicable statute of limitation shall commence no later than the substantial completion by the Consultant of the services.

24. Nondiscrimination

The Consultant or sub-Consultants shall not discriminate on the basis of any defined protected class as defined by either State or Federal law including race, color, national origin, gender, or sexual orientation in the performance of this contract. Failure by the Consultant to carry out this requirement is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the City deems appropriate.

25. Captions, Headings and Titles

All captions, headings or titles in the paragraphs or sections of this Agreement are inserted for convenience of reference only and shall not constitute a part of this Agreement or act as a limitation of the scope of the particular paragraph or sections to which they apply. As used herein, where appropriate, the singular shall include the plural and vice versa and masculine, feminine and neuter expressions shall be interchangeable. Interpretation or construction of this Agreement shall not be affected by any determination as to who is the drafter of this Agreement, this Agreement having been drafted by mutual agreement of the parties.

26. Severable Provisions

Each provision of this Agreement is intended to be severable. If any provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

27. Entire Agreement

This Agreement contains the entire understanding of the parties hereto in respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties with respect to such subject matter.

28. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be one and the same Agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective the day and year first set forth above.

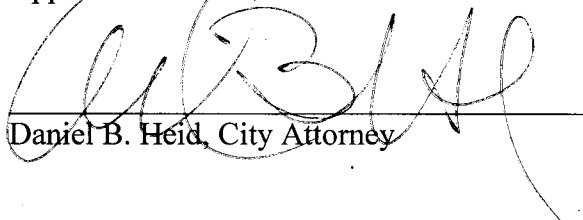
**CITY OF AUBURN**

**CONSULTANT**

\_\_\_\_\_  
Peter B. Lewis, Mayor

\_\_\_\_\_  
Name: Jan Dorbritz, AIA  
Title: Principal

Approved as to form:

  
\_\_\_\_\_  
Daniel B. Heid, City Attorney

Attest:

\_\_\_\_\_  
Danielle E. Daskam, City Clerk

STATE OF WASHINGTON    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

ON THIS \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_, before me, personally appeared \_\_\_\_\_ and \_\_\_\_\_, to me known to be the \_\_\_\_\_ and \_\_\_\_\_ of the Consultant, the corporation/company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation/company, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**Attachments: Exhibit A – Scope of Work**  
**Exhibit B – Schedule of Compensation**

# **CITY OF AUBURN AGREEMENT FOR PROFESSIONAL SERVICES City Hall Remodel**

## **EXHIBIT A**

### **SERVICES:**

The Consultant will provide architectural and engineering services for the project, which is for tenant improvements within the City of Auburn designated spaces (Suites 200, 300, 304 and 305) in the City Hall Annex Project. The Consultant is responsible for project administration and management and will include a variety of services including the review of existing documents, programming and space planning, design, coordination of sub-consultant engineering (mechanical, plumbing and electrical), preparation of contract documents, permitting, bidding and construction administration.

With various departments anticipating relocation into the City Hall Annex, space occupied by the City shall be designed for optimal use. Planning will take a variety of meetings between the Consultant and City staff before an acceptable consensus can be attained. The Consultant shall draft plans and upon consensus, proceed in generating construction documents as required for permitting and bidding. The documents shall include floor plans, reflected ceiling plans, interior elevations, power and lighting plans (architectural only), cabinetry in concept and detail, specifications, materials and color selections. The Consultant will assist the City in procuring all required permits for construction. The Consultant will assist the City in the bidding phase of the project, including preparation of bid documents, preparation of addenda, review and analysis of bidders' inquiries and bids. The Consultant will provide construction administration services.

# CITY OF AUBURN AGREEMENT FOR PROFESSIONAL SERVICES City Hall Remodel

## EXHIBIT B

### FEES:

A total not to exceed fee of ninety-one thousand nine-hundred and forty dollars (\$91,940.00) will be charged for designated services on a time and materials basis. The professional services fee is based on the following professional hourly rates:

Phase		Principal	Senior Designer	Designer/Job Captain	Draftsperson	Total hrs.	Total fee
<b>Meetings</b>							
<b>16 w/</b>	<b>Dept. Heads/Staff</b>						
	hrs.	20	20			40	
	value	\$2,500	\$1,900				\$4,400
<b>10 w/</b>	<b>Consultants</b>						
	hrs.	8	7	7		22	
	value	\$1,000	\$665	\$455			\$2,120
<b>6 w/</b>	<b>Vendors</b>						
	hrs.		4	4		8	
	value		\$380	\$260			\$640
<b>Review and Adjustment of Previous Programming</b>							
	4 weeks						
	hrs.	8	8	8	18	42	
	value	\$1,000	\$760	\$520	\$810		\$3,090
<b>Space Planning Concepts</b>							
	8 weeks						
	hrs.	16	24	24	32	96	
	value	\$2,000	\$2,280	\$1,560	\$1,440		\$7,280
<b>Interior Concepts &amp; Design</b>							
	4 weeks						
	hrs.	10	24	20	40	94	
	value	\$2,500	\$2,280	\$1,300	\$1,800		\$7,880
<b>Design Development</b>							
	3 weeks						
	hrs.	8	12	6	24	50	
	value	\$1,000	\$1,140	\$390	\$1,080		\$3,610
<b>Construction Documents</b>							
	4 weeks						
	hrs.	6	16	40	100	162	

value	\$750	\$1,520	\$2,600	\$4,500	\$9,370
<b>Construction Administration</b>					
3 months					
hrs.	12	8	16	10	46
value	\$1,500	\$760	\$1,040	\$450	\$3,750
<b>Total Fee for Architectural Services not to exceed:</b>				560	<b>\$42,140</b>
<b>Mechanical Engineering Lump Sum Fee</b>					<b>\$16,800</b>
<b>Electrical Engineering Lump Sum Fee</b>					<b>\$26,000</b>
<b>Allowance for Consulting Engineering Services/Low Voltage Systems</b>					<b>\$7,000</b>
<b>Total Fee Budget not to exceed</b>					<b>\$91,940</b>

Extra services agreed to by the City beyond the project scope shall be billed on a time and materials basis at the hourly rates indicated above.

Consultant shall not invoice for travel.